

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENTS AND  
PRELIMINARY AMENDMENT

Attorney Docket No.: Q96125

Application No.: 10/587,398

**REMARKS**

This responds to the Restriction and Election of Species Requirement dated March 6, 2009.

**Response to Restriction Requirement**

In response to the Restriction Requirement, Applicants elect for **examination Group II, claims 5, 6 (canceled), 33 and 34**, drawn to a multipotent stem/progenitor cell. This election is made with traverse.

Applicants amend claim 5 by fully reciting the feature of claim 1 and incorporating the content of claim 6, and cancel claim 6.

**Response to Species Election Requirement**

**Election of Species**

This responds to the Election of Species Requirement dated March 6, 2009. The Examiner has identified the application as containing claims directed to more than one distinct species. The Examiner has required the Applicants to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted. The Examiner believes claim(s) 1-33 are generic. Applicants have been advised that a response to this requirement shall include an identification of the species that is elected and a listing of all claims readable thereon.

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In response to the Examiner's requirement, as Group II is elected above, Applicants elects for examination **Parkinson's disease** among the various condition recited in claim 34 on which claims 1-33 (thus, including elected claims 5, 6 (canceled), and 33) are readable.

**Preliminary Amendment and Traverse**

Claim 5 thus amended shows that the multipotent progenitor/stem cells of the claimed subject matter exhibit different immunophenotype profiles from those of mesenchymal stem cells of Pittenger *et al.* Solely in order to assist the Office to distinguish the disclosure of Pittenger (page 144, left column, lines 10-14 and 24-29) and the subject matter of claim 5 (as amended), applicants present the following table.

	positive	negative
multipotent progenitor/stem cells of the <b>subject application</b>	<b><u>CD14</u></b> , CD31, <b><u>CD45</u></b> , CD54, CD166, CD44, CD104	CD34, CD133, CD105( <b><u>SH2</u></b> ), CD73( <b><u>SH3</u></b> , SH4), CD62E, <b><u>CD90</u></b> (Thy-1), CD49a
mesenchymal stem cells of <b>Pittenger et al.</b>	<b><u>SH2</u></b> , <b><u>SH3</u></b> , CD29, CD44, CD71, <b><u>CD90</u></b> , CD106, CD120a, CD124	<b><u>CD14</u></b> , CD34, <b><u>CD45</u></b>

Therefore, Applicants respectfully submit that the technical feature common to Group II (amended claim 5, claim 33 and 34) and other Groups are novel and patentable over Pittenger and contribute over the art.

With regard to the multiple products and process under 37 C.F.R. § 1.475, Applicant respectfully submit that Group II (elected) and Group III, claims 9-12 may fall into the category

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that can be examined together in an application as falling into a product (Group II) which can be used in a method (Group III). See page 3 of the Restriction Requirement. Accordingly, Applicants respectfully submit that there exists unity of invention between Group II and Group III, and request that **Group II (claims 5, 6 (canceled), 33 and 34) and Group III (claims 9-12) be examined together.**

Applicant submit that if the elected species is free of prior art, the remaining non-elected species be fully examined for their patentability.

Applicants submit that if any of the elected claims is found to be allowable, claims dependent therefrom should similarly be considered allowable in the same application.

Applicants reserve the right to file a Divisional Application directed to non-elected claims.

Respectfully submitted,

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**23373**

CUSTOMER NUMBER

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